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RULES

of

The United States Court of Customs and Patent Appeals

[Effective July 1, 1953]

AND ORGANIC ACTS

RULES

of

The United States Court of Customs and Patent Appeals

{Effective July 1, 1953}

AND ORGANIC ACTS

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[Abbreviation: par. = paragraph]

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RULES OF THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

Effective July 1, 1953

GENERAL

RULE 1

CLERK

(1) The clerk of this court shall keep his office in the city of Washington. He shall not practice either as an attorney or counselor of this court while he shall continue to be clerk. He shall indorse on every paper the date on which the same is filed and shall not permit any original paper, document, or exhibit to be taken from the files without an order from the court or permission of one of the judges thereof. The parties interested in any matter pending before the court may have full access to the records in such matters in the office of the clerk and may take copies of all papers filed therein: *Provided*, That the clerk, in executing the duties required of him, may allow any original papers or transcripts of record on file in his office to be used by the printer, and said clerk shall be responsible for the preservation and safe return thereof.

(2) It shall be the duty of the clerk to preserve, for the use of the court, one copy of the record in each case disposed of, together with the briefs of counsel.

(3) The clerk shall furnish to any applicant a copy of any paper on file in any case on payment of the legal fees therefor.

(4)[1] The office of the clerk shall be open for the transaction of business on every day except Sundays and legal holidays from 9 o'clock a. m. to 4:30 o'clock p. m., except on Saturdays, when it shall be open from 9 o'clock a. m. to 12 o'clock noon.

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[1] NOTE.—In connection with the above rule arrangements have been made whereby parties or attorneys desiring to file papers after the clerk's office closes on any business day may deliver the same before midnight of that day at the office of the Captain of the Guard, at the main entrance of the Internal Revenue Building on Constitution Avenue, where they will be retained and delivered to the clerk and filed as of the date of their receipt in the said office of the Captain of the Guard.

RULE 2

ATTORNEYS

Parties shall be entitled to be represented in this court by attorney. Any attorney who is entitled to practice in the Supreme Court of the United States or in the courts of appeals of the United States or in the court of last resort in any State or Territory or the District of Columbia or in the United States Court of Claims may be admitted to practice in and have his name enrolled as an attorney of this court by the clerk, upon filing a recommendation of any justice of the Supreme Court of the United States, United States circuit or district judge or judge of the United States Court of Appeals or District Court of the United States for the District of Columbia, of the United States Court of Claims, the United States Customs Court, or of the court of last resort of the State or Territory in which such attorney is entitled to practice at the time of his application for admission to this court, or upon motion by an attorney of this court made in open court, the applicant being present. Prior to the issuance of the certificate of admission the attorney shall take and subscribe the following oath of office, which shall be filed with the clerk:

"I, ——— ———, do solemnly swear [or affirm] that I will demean myself, as an attorney and counselor of this court, uprightly and according to law, and that I will support the Constitution of the United States. So help me God."

RULE 3

PROCESS

Process to be issued from this court shall be of such form and style as is in use in the Supreme Court of the United States. All writs shall be attested in the name of the chief judge and shall be signed by the clerk of the court, with the seal of the court attached, and shall be returnable at such times as the court may fix.

RULE 4

BONDS OF OFFICIALS OF THE COURT

Bonds furnished by officials of the court shall be in conformity with the provisions of Title 28, United States Code, Secs. 832 and 952.

RULE 5

FEES TO BE COLLECTED AND ACCOUNTED FOR BY THE CLERK

The clerk shall demand and receive of the party or parties at whose instance or request the service is performed, or who by law may be

bound to pay, fees of his office, which shall be payable in advance, according to the following schedule:

1. There shall be paid for each admission to practice, including certificate thereof	$5.00
2. For each certificate under seal	1.00
3. For making or copying any record or other paper and certifying the same, per folio of 100 words	.20
4. For filing and docketing each customs appeal, $15, this fee to be in full of all fees in the case: *Provided*, That when an appeal is taken by the United States, no payment of fees shall be required	15.00
5. For filing and docketing each patent appeal, $15, this fee to be in full of all fees in the case: *Provided*, That when an appeal is taken by or on behalf of the United States, no payment of fees shall be required	15.00
6. For certifying a printed record	2.00
7. The fees and costs to be allowed the marshal shall be, and hereby are, fixed the same as those allowed the marshal of the Supreme Court of the United States.	

Rule 6

SESSIONS

The court will convene during sessions at 10 a. m., unless otherwise ordered. All motions shall be presented at the opening of court on each day when the court is in session for hearing causes.

Rule 7

REHEARINGS

A petition for a rehearing of any cause submitted to this court may be filed in the clerk's office at any time within 20 days from the date of final decision therein, unless further time be granted by the court or a judge thereof. Such petitions shall be printed and served upon opposing counsel in the same manner provided herein for briefs, and 18 copies thereof shall be filed with the clerk. The petition in each case shall be confined to a brief statement of points supposed to have been overlooked or misapprehended by the court, with proper references to the particular portion of the transcript of the record or original briefs relied upon, and with authorities and suggestions, concisely stated, in support of the points. The opposing party may at any time within 10 days thereafter, unless further time be granted, file with the clerk his objections to the granting of said petition, which shall be printed and served in a like manner as said petition, and the question shall thereupon be deemed submitted for decision: *Provided*, That if the party resides west of the Rocky Mountains or beyond the continental limits of the United States there shall be allowed 10 days additional time for filing said petition or objections.

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RULE 8

TESTIMONY—CHARACTER OF TO BE INDICATED

Where transcripts of testimony appear in records filed in this court, all questions on direct examination shall be designated by "Q." All questions on cross-examination by "X Q.", on redirect by "R Q.", and on recross-examination by "R. X Q." Answers shall be designated by "A." Where depositions appear in the record, it shall not be necessary to print therein the commission or dedimus, unless error is assigned thereon. In printing such depositions each interrogatory shall be followed immediately by the answer thereto. When the record returned does not comply with this rule appellant's attorney shall prepare for the use of the clerk a transposition of such answers.

RULE 9

CITATIONS

(1) When citing in a brief a decision of this court, published either in the Federal Reporter or in the United States Patents Quarterly, the reference shall also include the volume and page of the United States Court of Customs and Patent Appeals Reports. (Those Reports always cite the C. C. P. A. volume and page numbers in which each decision is published.)

(2) Where reference is made in a brief to certain matters included in the printed record, the page number thereof shall be designated as "(R-)."

RULE 10

SUNDAYS AND LEGAL HOLIDAYS

Wherever days are mentioned in these rules as limitations of time, they shall be construed to exclude Sundays and legal holidays in the District of Columbia [2] but to include Saturday half holidays. When the time fixed by an order of court for doing any act elapses on a Sunday or legal holiday, such time shall extend to and include the next succeeding day that is not a Sunday or legal holiday.

RULE 11

TESTIMONY IN OTHER THAN ENGLISH LANGUAGE

All testimony, papers, or exhibits, in any language other than English, incorporated in the record of any case appealed to this court, shall be accompanied by a correct translation of the same into the

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[2] These legal holidays are January 1, February 22, May 30, July 4, the first Monday in September, November 11, Thanksgiving Day, December 25, and Inauguration Day every fourth year.

English language. By stipulation of counsel, the original copy need not be printed: *Provided,* This rule shall not apply to entries and invoices in customs cases.

Rule 12

MOTIONS

Every motion to the court shall be typewritten or printed, shall state clearly its object and the facts upon which it is based, and shall bear the signature of the maker. Oral argument will not be heard on any motion unless the court specially assigns it therefor, when such time shall be allowed for argument as the court shall fix. Notice of such motion shall be served upon the opposing party or his counsel a reasonable time before the hearing thereof, and proof of such service shall accompany and be filed with the motion. All motions shall be accompanied by a written order submitted for the approval of the court.

Rule 13

DIMINUTION OF RECORD

No certiorari to correct diminution of the record will be awarded in any case, unless a typewritten or printed motion therefor shall be made, and the facts on which the same is founded shall be shown by the affidavit of the party or his attorney of record. Such affidavit shall also show that the omitted matter is material and necessary to the fair trial of the case on its merits and that the suggestion is not made for delay: *Provided,* That, if the same facts are stipulated by counsel, no motion or affidavit is required. The costs for printing such additional matter when inserted upon motion of appellee, may, in the discretion of the court, be assessed on final decision.

Rule 14

DOCUMENTARY EXHIBITS

In no case will the court consider as evidence any documentary exhibit not certified to be a part of the record in the case by the court or tribunal from which the appeal is taken. Documentary exhibits transmitted to the clerk and certified to be a part of the record in the case need not be printed, unless the court, or a judge thereof, shall otherwise order, or unless the printing of same is specially requested, in writing, by the party or parties appealing the case, but said exhibits shall be considered by the court the same as if they were printed in the record.

RULES APPLICABLE TO CUSTOMS CASES

(See also General Rules 1 to 14)

Rule 15

REVIEW

Any party feeling aggrieved at any decision of the United States Customs Court and who may be entitled, under the provisions of chapter 167; Title 28, United States Code, or any amendment thereof, to have a review of said decision, may, within the time fixed by said act or any amendment thereof, petition this court, in duplicate, for a review of the same, as provided by law, filing a copy of such petition simultaneously with the Clerk of the United States Customs Court.

Rule 16

ASSIGNMENT OF ERRORS

The party seeking a review of any appealable decision of the United States Customs Court shall file with the clerk of this court, in duplicate, a concise statement of the errors of law and fact complained of, and a copy of such statement shall be served on the collector or on the importer, owner, consignee, agent, or attorney, as the case may be, either by mail or by delivering the same personally to the party to be served or to his attorney, who shall have regularly appeared before said United States Customs Court on or before the date of such petition. Such service, in case of mailing, shall be by depositing in a post office a copy of such statement in a sealed envelope plainly addressed to the party or attorney to be served, at his place of business or residence, with postage thereon fully prepaid. In all cases where the United States is not the appellant, such application for review shall be accompanied by the filing fee of $15.

Rule 17

MANDATE

Upon the filing of said petition for review, a process which shall be called a mandate shall issue to said United States Customs Court directing said court to transmit to this court the records and evidence of the proceedings taken and had by it, together with a certified statement of the facts involved in the case and the decision thereon, together with all samples and exhibits used before it. In all cases in which a motion for rehearing was made before the United States Customs Court, such motion and all affidavits in support thereof or in opposition thereto, shall be certified to be a part of the record in the

case. Such mandate shall be made returnable in 30 days, and the time for said return may be extended, upon application to the court or a judge thereof, at chambers, and upon good cause shown.

RULE 18

CALENDAR

All cases appealed to this court shall be placed upon the calendar in the order in which they are received, and such cases shall stand for hearing and submission in that order, unless otherwise ordered by the court or a judge thereof. The hearing of any case may be postponed for good cause shown. On motion of either party, with due notice to the other side, or upon its own motion, the court, or the chief judge, may advance on the calendar cases that are of unusual importance, or whenever other consideration of public policy make such action appear desirable.

RULE 19

RECORDS AND BRIEFS

(1) The clerk shall, immediately upon the filing of such return provided for in Rule 17, cause an estimate to be made of the costs of printing the same or the parts thereof necessary to be printed under the rules of this court. Whenever the parties stipulate that any part or parts of the record are not essential to the decision of the questions presented by the appeal, such part or parts shall not be printed: *Provided, however,* That such stipulation is approved by the trial court. The clerk shall notify by mail the appellant of the amount of the estimate, and appellant shall, within 14 days of the date of such notice, deposit with the clerk a sum sufficient to meet the cost of printing the record: *Provided,* That the court or any judge thereof may, upon motion for good cause shown, extend the time for printing the record and for the payment of the cost of such printing. As soon as the record is printed the clerk shall retain at least 15 copies for the use of the court, and furnish not less than 10 copies to the appellant, who shall serve not less than 3 copies on the appellee or his counsel.

(2) Within 30 days after receipt of the printed record, appellant shall serve on the appellee, or his counsel, not less than 3 printed copies of his brief, and within 30 days thereafter the appellee shall serve not less than 3 printed copies of his brief on the appellant, or his counsel: *Provided,* That if the importer resides west of the Rocky Mountains, or beyond the continental limits of the United States, there shall be allowed 10 days additional time for depositing the cost of printing the record and for the serving of briefs on both sides. Both sides shall, within the time above specified, file not less than ~~18~~ 25 copies of their

briefs with the clerk. An extension of time for filing of briefs may be made by the court, or any judge thereof, on motion, supported by an affidavit or affidavits showing good cause therefor.

(3) During the summer recess of the court that portion of this rule requiring motions and affidavits in support of application for extension of time for filing briefs in customs appeals is suspended until September 27 as to all cases on the calendar, and such extensions may be made by written stipulation of counsel filed in the clerk's office: *Provided, however,* That the time of filing briefs for appellants shall not be thus extended to a date after August 27, and the time of filing briefs for appellees shall not be thus extended to a date after September 27.

(4) Records and briefs shall have a suitable cover containing the title of the court and cause. Records shall be properly indexed and printed under the direction of the clerk of the court. The size of the pages of the records and briefs shall be 9¼ by 6⅛ inches. They shall be printed in 11-point type, be adequately leaded, and the paper must be opaque and unglazed.

(5) Every brief of more than 15 pages shall contain on its front fly leaves a subject index with page references, the subject index to be supplemented by a list of all authorities referred to, together with references to pages thereof.

(6) Reply and supplemental briefs may not be filed except by leave of the court or any judge thereof, for good cause shown. If, under special circumstances, permission is granted to file typewritten reply or supplemental briefs, the pages thereof shall conform to the size required for printed briefs.

Rule 20

APPEALS, WHEN TAKEN

The court shall be open for business on each business day of the year for the purpose of receiving applications for appeal, and on such days writs directed to the United States Customs Court may issue as of course, attested in the name of the chief judge and signed by the clerk or an assistant clerk. In case of a vacancy in the office of the chief judge, they may be attested in the name of the next judge in the order of precedence as acting chief judge.

Rule 21

AMENDMENTS—JUDGMENTS

The court may, in furtherance of justice, permit amendments to processes or proceedings in any case, and on final hearing may affirm,

reverse, or modify any ruling, decision, or conclusion of the United States Customs Court, or may reverse and remand for new trial or other appropriate proceeding.

Rule 22

FINAL MANDATE

At the expiration of 30 days after final decision by the court, or sooner, if stipulated by counsel in the case, the court shall issue a mandate to the United States Customs Court for such further proceedings as shall be proper to be taken in pursuance of such decision: *Provided*, That a petition for rehearing shall act as a stay of said mandate until the same is finally disposed of, and the time of issuance thereof may be further extended by the court or a judge thereof.

Rule 23

ORAL ARGUMENTS

Oral arguments shall be limited to one hour on a side, except as hereinafter stated, and unless otherwise ordered by the court, and not more than two counsel on a side shall be heard in any case except by special order of the court. In cases on the subject of remission of additional duties, argument shall be limited to one-half hour on each side. In all cases where one side submits on brief, the argument shall be limited to one-half hour.

Rule 24

APPEARANCES

It will not be necessary for the Assistant Attorney General in charge of customs cases to file a notice of appearance in this court or to serve such notice on opposing attorneys. Where the appellant is the protestant, if the petition for review is filed by a member of the bar of this court, no separate appearance as attorney will be required, but a notice of appearance shall be served on the Assistant Attorney General, unless such appellant's attorney represented the importer before the United States Customs Court. Where the United States is the appellant, the attorneys for the appellee shall file a notice of appearance in this court and serve a copy of such notice on the Assistant Attorney General.

If the petition for review is subscribed by an attorney not a member of the bar of this court, it may be filed, but no further proceedings shall be had with respect to the same, other than dismissal of the appeal, until either a notice of appearance by a member of the bar of this court, or a notice of appearance by the petitioning party *in propria persona*, is filed.

RULES APPLICABLE TO APPEALS FROM THE PATENT OFFICE

(See also General Rules 1 to 14)

Rule 25

PETITION OF APPEAL—TRANSCRIPT OF RECORD

(1) In appeals from the Patent Office the appealing party shall file in the clerk's office a petition, addressed to the court, in which he shall briefly set forth and show that he has complied with the requirements of Title 35, United States Code, sections 142 and 143, to entitle him to an appeal, and praying that his appeal may be heard upon and for the reasons assigned therefor to the commissioner. Said reasons for appeal having been filed with the Commissioner of Patents and made a part of the record, shall not be repeated in the petition of appeal. Said petition of appeal and a certified copy of the record in the proceeding shall be filed in this court and the case duly docketed within 40 days (exclusive of Sundays and legal holidays) from the date upon which said reasons for appeal were filed with the Commissioner of Patents: *Provided,* That the commissioner may for special and sufficient cause extend such time to some definite and fixed date: *Provided further,* That in inter partes cases appellant shall, at the time of filing said petition of appeal in this court, or within 10 days thereafter, serve a copy thereof upon appellee or his counsel.

If said petition of appeal and copy of said record shall not be filed within said period of 40 days, unless such time be extended by the commissioner as heretofore provided, the commissioner, upon such facts being brought to his attention by motion of the appellee in inter partes cases, duly served upon the appellant or his attorney, and upon his own motion in ex parte appeals, may take such further proceedings in the case as may be necessary to dispose of the same as though no notice of appeal had ever been given: *Provided, however,* That if any adverse party in an interference case shall, within 20 days after appellant shall have filed notice of appeal to this court, file notice with the Commissioner of Patents that he elects to have all further proceedings conducted as provided in Title 35, United States Code, section 146, certified copies of the notice of appeal and the notice of election shall be transmitted to this court by the Commissioner of Patents for appropriate action according to law.

(2) All certified copies of papers and evidence on appeal from the decision of the final appellate tribunal of the Patent Office shall be received by the clerk of this court, and the cases, by titling and number, shall be placed on a separate docket to be designated as the "Patent Appeal Docket." The clerk shall, under this titling of the

case on the docket, make brief entries of all papers filed and of all proceedings had in the case.

(3) In making up the transcript of record on appeal it shall be the duty of the Commissioner of Patents to omit the following:

(*a*) Face and back of file wrappers; formal indorsements on backs of papers.

(*b*) Printed letterheadings and the like. (Examiners' letters and other office letters need show only the date, address, short title, and number of case, body of letter, and signature.)

(*c*) Notices of publication, of hearings, of decisions, of allowance, of receipt of fees, reference slips, interference cards, and the like (except when material to some question raised on the appeal, and then merely a memorandum need be made—e.g., "Memorandum: Notice of allowance mail to _____ _____, address _____, date _____ __, _____").

(*d*) A patent or other instrument once inserted shall not be inserted a second time, but reference made thereto by memorandum if necessary.

(*e*) Further to reduce the costs of appeals, it shall be permissible for counsel for the respective parties, subject to the approval of the Commissioner of Patents, to agree upon a statement of the facts of the case, setting forth the questions raised on appeal and so much only of the evidence as may be necessary to a decision of such question. Such statment shall be in duplicate signed by counsel for the parties and filed with the Commissioner of Patents. When so filed, one of the duplicates, together with the decisions of the office, shall constitute the record on appeal and shall be certified accordingly.

(4) Appeals from the Patent Office shall be subject to all the rules of this court provided for other cases therein, except where such rules, from the nature of the case, or by reason of special provisions inconsistent therewith, are not applicable.

Rule 26

PRINTING OF RECORDS AND BRIEFS

(1) The clerk shall, immediately upon the filing of the transcript of record, cause an estimate to be made of the costs of printing the same or the parts thereof necessary to be printed under the rules of this court, and shall notify by mail the party so filing the transcript of the amount of the estimate, and if he shall not pay the amount so ascertained within 30 days after date of such notice such appeal may be dismissed: *Provided*, That in the case of cross appeals the appellants may by agreement apportion and pay the estimated costs within

said period of 30 days. In the absence of such agreement the clerk shall apportion said estimated costs upon a fair basis and notify the parties by mail of such apportionment. If either party shall fail to pay his portion of the estimated costs within the period of 10 days after the date of mailing said notice by the clerk, the clerk shall notify the adverse party by mail or wire, and the adverse party may pay said portion within 10 days thereafter. If the full amount is not paid within said last named period of 10 days the appeals may be dismissed: *And provided further*, That the court or any judge thereof may, upon motion, for good cause shown, extend the time for printing the record and for the payment of the cost for such printing.

(2) The printing of said transcripts shall be under the supervision of the clerk of this court, and he shall properly index the matter contained in such transcripts and shall distribute copies as directed by the rules or practice of the court.

The size of said printed transcripts shall be 7⅝ by 10¼ inches and the type matter shall be 4⅙ by 7⅙ inches. They shall be printed in 11-point type and adequately leaded; and the paper must be opaque and unglazed.

Briefs shall have a suitable cover containing the title of the court and cause, and shall in all cases conform to the size of the transcript, and the type matter shall conform as nearly as possible to that provided for the transcript, but in no event shall the type be smaller than 11-point type.

(3). In appeals in matters of application for patent, the transcript of the record shall contain, in addition to the other matters of record certified by the Patent Office, separately and at the end of the transcript, under the heading Rejected Claims, a true and correct copy of all rejected claims which are in issue in the appeal, in straight reading matter and without caret or other interlineations. If any claims of the applicant shall have been allowed, and a consideration of the same shall be involved in the issues presented on appeal, a like copy of said allowed claims shall immediately follow the rejected claims, under the heading Allowed Claims. It will not be necessary to include either the rejected or allowed claims elsewhere in the record, except by reference, unless they constitute a part of the decisions of the tribunals of the Patent Office: *Provided*, That where the action of the Patent Office upon motions for amendment or substitution of claims is in issue, then sufficient data shall be shown in the transcript of the record fully to develope that issue.

In all cases of interference, the counts of the interference shall be printed in a like manner, under the heading Interference Counts.

In opposition, interference, and cancellation trade-mark cases, the transcript of the record shall contain a copy of the trade-mark pro-

posed to be registered or canceled, and of the trade-mark and registration thereof, if any, which is relied upon by the opposer, applicant for cancellation, or party in interference.

RULE 27

ARGUMENT OF PATENT CASES AND THE PREPARATION THEREFOR

(1). Not more than two counsel shall be heard for each party appellant and appellee, in the argument of the cause, except by special leave of the court, upon sufficient reason shown.

(2). Forty-five minutes for appellant and 30 minutes for appellee, in patent interference matters, and in ex parte and trade-mark cases one-half hour on each side, shall be allowed in oral argument, unless otherwise ordered by the court. The time may be apportioned between counsel on the same side at their discretion. In all cases, however, a full and fair opening must be made. Any case may be submitted on briefs, when reached in regular order, if counsel choose to submit the same in that manner. When a case is reached on the regular call, if briefs have been filed and no counsel appear to present oral argument, the case will be regarded as submitted on briefs.

(3). For the appellant there shall be filed with the clerk of the court 25 ~~18~~ copies of his printed brief within 40 days after the record shall have been printed. At the time of filing his brief the appellant shall serve three copies of the same upon the appellee or his counsel of record in the Patent Office. The brief for the appellant shall contain, in the order here stated:

(*a*) A concise statement of the case, presenting succinctly the questions involved and the manner in which they are raised.

(*b*) Such of the errors as shall be relied upon.

(*c*) A clear statement of the points of law or fact to be discussed, with reference to the pages of the record and the authorities relied on in support of each point.

(*d*) Every brief of more than 15 pages shall contain on its front fly leaves a subject index with page references, the subject index to be supplemented by a list of all authorities referred to, together with references to pages thereof.

(4) For the appellee there shall be filed with the clerk 25 ~~18~~ copies of the printed brief for his side of the case within 30 days from the filing of appellant's brief.

At the time of filing his brief in this court the appellee shall serve three copies on appellant or his counsel of record. Such brief shall be of like character to that required of the appellant, except that no statement of the case is required, unless that presented by the appel-

lant be controverted or denied to be sufficiently full and complete to present the questions for review.

The time for filing briefs may be extended by stipulation of counsel filed in the clerk's office, where such extension will not delay the assignment of the case for argument and when such stipulation is filed within the time provided by these rules for the filing of briefs. Except by leave of the court, or a judge thereof, for extraordinary reasons shown, no party will be permitted to file a brief after the expiration of the time allowed as fixed by these rules (including the time allowed by extension granted in the ways herein provided).

Where an extension of time is desired that may delay the hearing, it must be applied for by motion, and will be granted only for good cause shown. Such extensions may be granted by the court or by any judge thereof.

When a case is called for hearing, if the appellant's brief is not on file, the appeal may be dismissed.

(5) When, according to the provisions of this rule, the appellee is in default, he will not be heard, except upon request of the court.

(6) The appellant in this court shall be entitled to open and conclude the case; but where there are cross appeals they shall be argued together as one case and the junior party shall be entitled to open and conclude the argument in this court.

(7) When a case is called for argument at two successive terms, and upon the call at the second term neither party is prepared to proceed with the argument, the appeal shall be dismissed at the cost of the appellant, unless sufficient cause be shown for further postponement.

(8) A case shall not be assigned for hearing until the briefs are filed or the time for filing them has elapsed: *Provided,* That parties may by agreement expedite the printing of the transcript and the printing of briefs and, by leave of court, may have the appeal assigned for hearing at an earlier day.

(9) Reply and supplemental briefs may not be filed except by leave of the court or any judge thereof, for good cause shown. If, under special circumstances, permission is granted to file typewritten reply or supplemental briefs, the pages thereof shall conform to the size required for printed briefs.

Rule 28

CALL OF PATENT DOCKET

The cases on this docket shall be placed on the calendar in the order in which they are received and be called for argument on the first Monday of January, March, May, and November in each year, unless otherwise ordered by the court, or the chief judge, and the cases shall be called in regular order as they may stand on the docket,

unless otherwise ordered by the court or the chief judge. A copy of these rules shall be furnished to the Commissioner of Patents, and it shall be the duty of the clerk of this court to give special notice to the commissioner at least three weeks immediately preceding the times thus respectively fixed for the hearing of the cases, the notice to name the place of the sitting of the court, the titling of the cases on the docket of this court, and the respective appeal numbers thereof, and at the same time, the clerk shall give notice to the parties interested or concerned by notice addressed to them severally by mail.

Rule 29

MODELS AND EXHIBITS

1. Models and exhibits of material forming part of the evidence taken in the Patent Office in any case pending in this court shall be placed in the custody of the clerk of this court at least 3 days before the case is heard or submitted.

2. All models and exhibits of material placed in the custody of the clerk for the inspection of the court on the hearing of the case must be taken away by the parties within 20 days after the case is finally con, cluded. When this is not done, it shall be the duty of the clerk to notify the counsel in the case and the Commissioner of Patents, by mail or otherwise, of the requirement of this rule, and if the articles are not removed within 10 days after the notice is given he shall destroy them or make such other disposition of them as to him may seem best.

RULES APPLICABLE TO APPEALS FROM THE UNITED STATES TARIFF COMMISSION

Rule 30

Appeals to this court from the United States Tariff Commission shall be subject to the rules hereinbefore provided under the headings "General" and "Rules applicable to customs cases."

ORGANIC ACTS

SECTIONS OF UNITED STATES CODE APPLICABLE TO THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

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SEC. 211. *Appointment and number of judges.* The President shall appoint, by and with the advice and consent of the Senate, a chief judge and four associate judges who shall constitute a court of record known as the United States Court of Customs and Patent Appeals.

SEC. 212. *Precedence of judges.* The chief judge of the Court of Customs and Patent Appeals shall have precedence and preside at any session of the court which he attends.

The associate judges shall have precedence and preside according to the seniority of their commissions. Judges whose commissions bear the same date shall have precedence according to seniority in age.

SEC. 213. *Tenure and salaries of judges.* Judges of the Court of Customs and Patent Appeals shall hold office during good behavior. Each shall receive a salary of $17,500 a year.

SEC. 214. *Sessions.* The Court of Customs and Patent Appeals may hold court at such times and places as it may fix by rule.

SEC. 215. *Quorum.* Three judges of the Court of Customs and Patent Appeals constitute a quorum. The concurrence of three judges is necessary to any decision.

SEC. 216. *Opinions.* The Court of Customs and Patent Appeals, on each appeal from a Patent Office decision, shall file a written opinion as part of the record and send a certified copy to the Commissioner of Patents who shall record it in the Patent Office.

SEC. 291. *Assignment of judges.*

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(*b*) The Chief Justice of the United States may designate and assign temporarily a judge of the Court of Customs and Patent Appeals to serve as a judge of the Court of Appeals or the District Court for the District of Columbia when requested by the chief judge of the court in need of such assistance.

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SEC. 293. *Circuit or ditrict jusdges to court of customs and patent* appeals. The Chief Justice of the United States may, upon presentation to him by the chief judge of the Court of Customs and Patent Appeals of a certificate of necessity, designate and assign temporarily any circuit or district judge to perform such duties as judge of the Court of Customs and Patent Appeals as he is willing to undertake.

SEC. 294. *Assignment of retired judges, other than the justices of the Supreme Court of the United States and judges of the circuit courts of appeals, to active duty.*

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(*c*) Any retired judge of any other court of the United States may be called upon by the chief judge of such court to perform such judicial duties in such court as he is willing to undertake.

(*d*) No retired justice or judge shall perform judicial duties except when designated and assigned.

SEC. 451. *Definitions.* As used in this title: The term "court of the United States" includes the Supreme Court of the United States, courts of appeals, district courts constituted by chapter 5 of this title, including the district courts of the United States for the districts of Hawaii and Puerto Rico, the Court of Claims, the Court of Customs and Patent Appeals, the Customs Court and any court created by Act of Congress the judges of which are entitled to hold office during good behavior.

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The term "judge of the United States" includes judges of the courts of appeals, district courts, Court of Claims, Court of Customs and Patent Appeals, Customs Court and any court created by Act of Congress, the judges of which are entitled to hold office during good behavior.

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SEC. 452. *Courts always open; powers unrestricted by terms.* All courts of the United States shall be deemed always open for the purpose of filing proper papers, issuing and returning process, and making motions and orders.

The continued existence or expiration of a term of court in no way affects the power of the court to do any act or take any proceeding.

SEC. 456. *Official station.*

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The official station of the Chief Justice of the United States, the justices of the Supreme Court and the judges of the Court of Claims, the Court of Customs and Patent Appeals, the United States Court of Appeals for the District of Columbia, and the United States District Court for the District of Columbia, shall be the District of Columbia.

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SEC. 459. *Administration of oaths and acknowledgments by judges.* Each justice or judge of the United States may administer oaths and affirmations and take acknowledgments.

SEC. 605. *Budget estimates.* The Director, under the supervision of the Judicial Conference of the United States, shall submit to the Bureau of the Budget annual estimates of the expenditures and appropriations necessary for the maintenance and operation of the courts and the Administrative Office, and such supplemental and deficiency estimates as may be required from time to time for the same purposes, according to law.

Such estimates shall be approved, before presentation to the Bureau of the Budget, by the Judicial Conference of the United States, except that estimates with respect to the Court of Customs and Patent Appeals, the Customs Court, and the Court of Claims shall be approved by such courts, respectively.

All such estimates shall be included in the budget without revision, but subject to the recommendations of the Bureau of the Budget, as provided by section 11 of Title 31 for the estimates of the Supreme Court.

SEC. 831. *Clerk and employees.* The Court of Customs and Patent Appeals may appoint a clerk and such assistant clerks, stenographic law clerks, clerical assistants and other employees as may be necessary, all of whom shall be subject to removal by the court.

The clerk shall pay into the Treasury all fees, costs and other moneys collected by him. He shall maintain an office at the seat of government.

SEC. 832. *Marshal.* The Court of Customs and Patent Appeals may appoint a marshal who shall serve within the District of Columbia and shall be subject to removal by the court.

He shall attend the court at its sessions, and shall serve and execute all process and orders issuing from it. He shall purchase books and supplies, supervise the library and perform such other duties as the court may direct. Under regulations prescribed by the Director of the Administrative Office of the United States Courts, he shall pay the salaries of judges, officers, and employees of the court and disburse funds appropriated for the expenses of the court.

United States marshals for other districts where sessions of the court are held shall serve as marshals of the court.

SEC. 833. *Reporter.* (a) The Court of Customs and Patent Appeals may appoint a reporter who shall be subject to removal by the court.

(b) The reporter shall prepare and transmit:

(1) To the Secretary of the Treasury, weekly, for publication, copies of all opinions relating to customs rendered by the court;

(2) To the Commissioner of Patents, weekly, for publication, copies of all opinions relating to patent and trade-mark appeals rendered by the court.

(c) The reporter also shall compile and publish, at least once a year, in such manner as the court directs, all opinions rendered by the court during the year, together with necessary digests and indexes as the court directs.

SEC. 834. *Bailiffs and messengers.* The Court of Customs and Patent Appeals may appoint necessary bailiffs and messengers who shall be subject to removal by the court.

Each bailiff shall attend the court, preserve order, and perform such other necessary duties as the court directs.

SEC. 952. *Bonds of clerks and deputies.* (a) The clerks of all courts other than the Supreme Court shall each give bond to the United States in an amount fixed by the Director of the Administrative Office of the United States Courts, and with sureties approved by the court appointing him, conditioned on the faithful and seasonable discharge of the duties of his office. Such bond shall be filed in the Administrative Office.

(b) A renewed or augmented bond may be required at any time by the Director.

(c) A copy of each bond so furnished shall be kept on file in the office of the clerk furnishing it.

(d) In like manner and with like effect, such courts may require deputy clerks and assistants to give bond to the United States for the faithful and seasonable discharge of their duties, without affecting the liability of the clerk for the acts of his deputies or assistants.

SEC. 953. *Administration of oaths and acknowledgments by clerks.* Each clerk of court and his deputies may administer oaths and affirmations and take acknowledgments.

SEC. 956. *Powers and duties of clerks and deputies.* The clerk of each court and his deputies and assistants shall exercise the powers and perform the duties assigned to them by the court.

SEC. 1256. *Court of Customs and Patent Appeals; certiorari.* Cases in the Court of Customs and Patent Appeals may be reviewed by the Supreme Court by writ of certiorari.

SEC. 2101. *Time for applying for certiorari.*

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(c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

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(e) An application to the Supreme Court for a writ of certiorari to review a case before judgment has been rendered in the court of appeals may be made at any time before judgment.

(f) In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court. The stay may be granted by a judge of the court rendering the judgment or decree or by a justice of the Supreme Court, and may be conditioned on the giving of security, approved by such judge or justice, that if the aggrieved party fails to make application for such writ within the period allotted therefor, or fails to obtain an order granting his application, or fails to make his plea good in the Supreme Court, he shall answer for all damages and costs which the other party may sustain by reason of the stay.

SEC. 1541. *Customs Court decisions.** The Court of Customs and Patent Appeals shall have jurisdiction to review by appeal final decisions of the Customs Court in all cases as to the construction of the law and the facts respecting the classification of merchandise, the

*For reappraisement appeals see section 2637.

rate of duty imposed thereon under such classifications, and the fees and charges connected therewith, and all appealable questions as to the jurisdiction of the Customs Court and as to the laws and regulations governing the collection of the customs revenues.

SEC. 1542. *Patent Office decisions.* The Court of Customs and Patent Appeals shall have jurisdiction of appeals from decisions of:

(1) the Board of Appeals and the Board of Interference Examiners of the Patent Office as to patent applications and interferences, at the instance of an applicant for a patent or any party to a patent interference, and such appeal by an applicant shall waive his right to proceed under section 63 of Title 35; and

(2) the Commissioner of Patents as to trade-mark applications and proceedings as provided in section 1071 of Title 15.

SEC. 1543. *Tariff Commission decisions.* The Court of Customs and Patent Appeals shall have jurisdiction to review, by appeal on questions of law only, the findings of the United States Tariff Commission as to unfair practices in import trade, made under section 1337 of Title 19.

SEC. 1926. *Fees and Costs.* Fees and costs in the Court of Customs and Patent Appeals shall be fixed by a table of fees adopted by such court and approved by the Supreme Court. The fees and costs so fixed shall not, with respect to any item, exceed the fees and costs charged in the Supreme Court, and shall be accounted for and paid over to the Treasury.

SEC. 2071. *Rule-making power generally.* The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed by the Supreme Court.

SEC. 2601. *Appeals from Customs Court decisions.* Any party to a proceeding before the Customs Court who is dissatisfied with the decision of such court as to the construction of the law and the facts respecting the classification of imported merchandise and the rate of duty imposed thereon under such classification, or with any other appealable decision of such court, may, not later than sixty days after the entry of the decision, apply to the Court of Customs and Patent Appeals for a review of all questions of law and fact. In cases arising in the Territories and Possessions ninety days shall be allowed for making such application.

The application shall be made by filing in the office of the clerk of the Court of Customs and Patent Appeals a concise statement of errors of law and fact complained of; and a copy of such statement shall be served on the collector, or on the importer, owner, consignee, or agent,

as the case may be. Thereupon the Court of Customs and Patent Appeals shall immediately order the Customs Court to transmit the record and evidence taken, together with a certified statement of the facts involved in the case and the decision thereon; and all the evidence taken by and before the Customs Court shall be competent evidence before the Court of Customs and Patent Appeals. The decision of the Court of Customs and Patent Appeals shall be final unless set aside or modified by the Supreme Court, and the case shall be remanded to the Customs Court for further proceedings to be taken in pursuance of such decision.

SEC. 2602. *Precedence of classification cases.* Every proceeding in the Court of Customs and Patent Appeals, relating to classification of merchandise or rate of duty assessed thereon, and arising under section 1516 (b) of Title 19, shall be given precedence over other cases on the docket of such court, and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way.

SEC. 2637. *Review of decisions of Customs Court.* The decision of a division of the Customs Court, in any matter within its jurisdiction shall be the decision of such court, and shall be final and conclusive upon all parties, unless a party to such proceeding takes an appeal to the Court of Customs and Patent Appeals within the time and manner provided in section 2601 of this title, but if the decision relates to a reappraisement of merchandise, such appeal to the Court of Customs and Patent Appeals shall be upon questions of law only.

TITLE 35—UNITED STATES CODE 1952

Sec. 141. Appeal to Court of Customs and Patent Appeals

An applicant dissatisfied with the decision of the Board of Appeals may appeal to the United States Court of Customs and Patent Appeals, thereby waiving his right to proceed under section 145 of this title. A party to an interference dissatisfied with the decision of the board of patent interferences on the question of priority may appeal to the United States Court of Customs and Patent Appeals, but such appeal shall be dismissed if any adverse party to such interference, within twenty days after the appellant has filed notice of appeal according to section 142 of this title, files notice with the Commissioner that he elects to have all further proceedings conducted as provided in section 146 of this title. Thereupon the appellant shall have thirty days thereafter within which to file a civil action under section 146, in default of which the decision appealed from shall govern the further proceedings in the case.

Sec. 142. Notice of appeal

When an appeal is taken to the United States Court of Customs and Patent Appeals, the appellant shall give notice thereof to the

Commissioner, and shall file in the Patent Office his reasons of appeal, specifically set forth in writing, within such time after the date of the decision appealed from, not less than sixty days, as the Commissioner appoints.

Sec. 143. Proceedings on appeal

The United States Court of Customs and Patent Appeals shall, before hearing such appeal, give notice of the time and place of the hearing to the Commissioner and the parties thereto. The Commissioner shall transmit to the court certified copies of all the necessary original papers and evidence in the case specified by the appellant and any additional papers and evidence specified by the appellee and in an ex parte case the Commissioner shall furnish the court with the grounds of the decision of the Patent Office, in writing, touching all the points involved by the reasons of appeal.

Sec. 144. Decision on appeal

The United States Court of Customs and Patent Appeals, on petition, shall hear and determine such appeal on the evidence produced before the Patent Office, and the decision shall be confined to the points set forth in the reasons of appeal. Upon its determination the court shall return to the Commissioner a certificate of its proceedings and decision, which shall be entered of record in the Patent Office and govern the further proceedings in the case.

Sec. 145. Civil action to obtain patent

An applicant dissatisfied with the decision of the Board of Appeals may unless appeal has been taken to the United States Court of Customs and Patent Appeals, have remedy by civil action against the Commissioner in the United States District Court for the District of Columbia if commenced within such time after such decision, not less than sixty days, as the Commissioner appoints. The court may adjudge that such applicant is entitled to receive a patent for his invention, as specified in any of his claims involved in the decision of the Board of Appeals, as the facts in the case may appear and such adjudication shall authorize the Commissioner to issue such patent on compliance with the requirements of law. All the expenses of the proceedings shall be paid by the applicant.

Sec. 146. Civil action in case of interference

Any party to an interference dissatisfied with the decision of the board of patent interferences on the question of priority, may have remedy by civil action, if commenced within such time after such decision, not less than sixty days, as the Commissioner appoints or as provided in section 141 of this title, unless he has appealed to the United States Court of Customs and Patent Appeals, and such appeal

is pending or has been decided. In such suits the record in the Patent Office shall be admitted on motion of either party upon the terms and conditions as to costs, expenses, and the further cross-examination of the witnesses as the court imposes, without prejudice to the right of the parties to take further testimony. The testimony and exhibits of the record in the Patent Office when admitted shall have the same effect as if originally taken and produced in the suit.

Such suit may be instituted against the party in interest as shown by the records of the Patent Office at the time of the decision complained of, but any party in interest may become a party to the action. If there be adverse parties residing in a plurality of districts not embraced within the same state, or an adverse party residing in a foreign country, the United States District Court for the District of Columbia shall have jurisdiction and may issue summons against the adverse parties directed to the marshal of any district in which any adverse party resides. Summons against adverse parties residing in foreign countries may be served by publication or otherwise as the court directs. The Commissioner shall not be a necessary party but he shall be notified of the filing of the suit by the clerk of the court in which it is filed and shall have the right to intervene. Judgment of the court in favor of the right of an applicant to a patent shall authorize the Commissioner to issue such patent on the filing in the Patent Office of a certified copy of the judgment and on compliance with the requirements of law.

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